



County of Los Angeles
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DAVID E. JANSSEN
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Board of Supervisors
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First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

June 29, 2006

To: Mayor Michael D. Antonovich
Supervisor Gloria Molina
Supervisor Yvonne B. Burke
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

From: David E. Janssen
Chief Administrative Officer

SACRAMENTO UPDATE

Pursuit of County Position on Legislation

AB 1528 (Jones), as amended on June 21, 2006, would provide that the State is entitled to a right of contribution against any local public entity whose actions contribute, or whose failure to act, contributes, to the failure of a flood control project when that failure causes property damage or personal injury and a judgment has been entered against the State. The bill would subject a local public entity to joint liability and the State's right of contribution to the extent that the local public entity increases the amount of property damage sustained in a flood by approving new development in a previously undeveloped area, defined as open space land or land devoted to agricultural use.

In addition, AB 1528 would prohibit the State Reclamation Board from facilitating State participation in a federal flood control project unless all cities and counties that lie within the project area agree to be subject to joint liability and contribution when any action related to the project is brought against the State or a State agency. AB 1528 is in response to a court decision (*Paterno v. California*, 2003) that specified that the State is liable for any failure of northern California levies even though the State did not initially build them, and is a re-introduction of County-opposed AB 3050 which is currently on the Assembly Inactive File.

The Department of Public Works (DPW) indicates that AB 1528 would make the Los Angeles County Flood Control District (LACFCD) and other local flood control districts liable for lack of additional improvements to existing flood control projects for which they are severely short of funds and that LACFCD might unfairly be held liable for damage from failed flood control projects where they have applied to the State for improvement permits and the State will not or has not approved the permits. DPW indicates that the bill could unfairly open the County to liability for flood damage that is caused by the failure of Cal Trans flood control improvements that ultimately empty into County flood control projects. DPW recommends that the County oppose AB 1528.

County Counsel agrees with DPW's recommendation and points out a number of additional concerns. First, the bill unfairly and inequitably circumvents existing appellate opinions and statutory law in an attempt to shift the risk of liability in flooding cases from the State to local public entities such as the County. Second, AB 1528 ignores the well established line of case law that created the rule of reasonableness for flooding and water damage inverse condemnation cases. In applying the reasonableness standard, the courts consider many factors including balancing the public need for flood control projects against the risks and severity of damages sustained by private landowners. In County Counsel's view, the bill creates a double standard because on the one hand, it does not abolish the rule of reasonableness with respect to the underlying case brought by the damaged property owner. But, on the other hand, it seems to apply the general strict liability standard on non-flood damage cases to the State's cause of action against the local public entity. Thus, the State may be able to recover under an indemnity theory from a local public entity while the property owner cannot – under the same facts. Third, the bill does not define the word "failure." It is not clear if AB 1528 refers to any failure, a failure tantamount to negligence, or something different. This vagueness leaves the door open for conflicting interpretations and a lack of clarity as to how local municipalities respond should the bill become law. Finally, the bill places local agencies in a situation in which they will be potentially liable to the State if they approve development, and potentially liable to the subdivider if they reject it.

The Department of Regional Planning (DRP) indicates that if AB 1528 became law, the County's potential flood damage liability for approving new developments in undeveloped agricultural and open space areas would lead to County reluctance to approve certain new developments in outlying areas, ultimately reducing County revenues from related property taxes and jobs. DRP indicates that AB 1528 would cause the County to get involved in many civil cases against the State and incur related legal costs in efforts to negotiate the extend of the County's financial liability. DRP also recommends that the County oppose AB 1528.

Opposition to AB 1528 is consistent with existing policy to oppose AB 3050 (Committee on Judiciary), and policy to oppose legislation which increases the County's liability or that would transfer to the County or its residents any costs or revenues losses incurred by another jurisdiction. **Therefore, our Sacramento advocates will oppose AB 1528.**

Support and opposition to the amended version of AB 1528 is currently unknown. The bill is currently in the Senate Judiciary Committee awaiting a hearing date.

Status of County-Interest Legislation

County-supported AB 1979 (Bass), which would waive fees for conducting State criminal background checks for volunteer mentors of foster children, passed the Senate Human Services Committee on June 27, 2006 by a vote of 5 to 0, and now proceeds to the Senate Public Safety Committee.

County-supported AB 2161 (Hancock), which would establish the Unified Resource Families Assessment Pilot Project in five volunteer counties to merge duplicative processes for licensing and approving foster and adoptive parents, passed the Senate Human Services Committee on June 27, 2006 by a vote of 5 to 0, and now proceeds to the Senate Appropriations Committee.

County-supported AB 2193 (Bass and Cohn), which would establish a new child welfare budget methodology to implement the caseload relief recommendations contained in the SB 2030 Child Welfare Workload Study, passed the Senate Human Services Committee on June 27, 2006 by a vote of 4 to 1, and now proceeds to the Senate Appropriations Committee.

County-sponsored AB 2961 (Nuñez), which would enhance benefits for CalWORKs families who are homeless or at imminent risk of homeless and provide limited, short-term housing assistance for CalWORKs families participating in welfare-to-work activities for whom housing instability is a significant barrier to finding and maintaining employment, passed the Senate Human Services Committee on June 27, 2006 by a vote of 5 to 0, and now proceeds to the Senate Appropriations Committee.

We will continue to keep you advised.

DEJ:GK
MAL:JF:IGR:hg

c: All Department Heads
Legislative Strategist
Local 660
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations
Buddy Program Participants